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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/056,000

01/28/2002

James Coleman

JAMES2001

2103

7590

05/19/2006

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EXAMINER

MISKA, VIT W

ART UNIT

PAPER NUMBER

2841

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,000

Applicant(s)

COLEMAN, JAMES

Examiner

Vit W. Miska

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15,19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1,5-7, 16-18 is/are rejected.
- 7) ☐ Claim(s) 2-4 and 8-14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by the new patent cited to Hoie. Regarding claims 1 and 16, the reference discloses a water feature including vessel having a body 1 containing a volume of water (col. 2, line 8), inlet 2a, outlet 4,7 inlet 2a arranged tangentially to the vessel body (col. 2, lines 43-44) to impart rotational movement to the body of water and forming a vortex (col. 2, line 44), controller B,C D for controlling the rate of water inlet in comparison to the water outlet to vary the height of water in the vessel over time. The variation in the rate of water inlet is described at col.2, lines 31ff: "The spigot A is opened, the spigot B is opened for filling the mixing tank 1 to the desired level, and then the spigot D in the outlet conduit 4 is opened..."
2. Regarding the "central drain located on or near a central axis of the vessel)" added to claim 1, the same is shown as the "diverging end 7 of an outlet conduit 4" (col.

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2, line 15) located “centrally in the tank 1” (col. 2, lines 16-17). Note that a “drain” is defined as “a pipe or channel by which liquid is drawn off” (*The American Heritage Dictionary of the English Language*, 1976). Conduit 4 and associated discharge end 7 thus together define the central drain claimed.

3. With respect to claim 5, a downstream portion 9 is shown as having a greater diameter than that of drain port 4.

4. Vessel 1 is illustrated in Figs. 1 and 2 as a cylindrical tube of circular cross section, as in claim 7.

5. Claim 18, previously indicated as being allowable, is now rejected for the reasons set forth below.

6. Claims 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by the German patent to Koenig ('648). The reference discloses vessel with body 3, tangential inlet A-A (Fig. 1) creating a vortex 6, causing the volume of water to vary in height over time as described in the abstract: “the vortex collapses and the pool empties completely; the process begins again”. Although not specifically mentioned, the laws of physics require that air is removed from or introduced into the vessel via the open top outlet as the volume of the water varies, as claimed in claim 18.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoie.

8. With respect to claim 6, a lid for vessel 1 is not disclosed in the reference. However, one of ordinary skill in the art would recognize that a lid therefor could be provided as a means to prevent spilling of the contents resulting from the turbulence created by the vortex.

9. The method steps recited in claim 16 are not specifically described by Hoie. However, at col. 2, lines 50-59, patentee describes operation of the system after vessel 1 has been filled to the desired level, wherein spigots B,C are "regulated to maintain the desired water level in the tank during the subsequent mixing and spraying of the admixed components". Therefore, when spigots A,B,C,D are initially opened for continuous flow, the water level is increasing to the desired level and the rate of introduction of the water exceeds the rate of draining. Thereafter, spigot B may be regulated as suggested to change the water level, or reduce the rate of introduction to the vessel such that the rate of draining exceeds the rate of introduction. One of

ordinary skill in the art would, therefore, have a suggestion for varying the rates of draining and introduction of water as claimed for achieving the desired water level.

10. With respect to claim 18, the introduction of air into vessel 1 and removal therefrom is not specifically mentioned in the reference. However, it is apparent to one skilled in the art that air is at first removed from vessel 1 through the open to thereof as the same is being filled with liquid, and subsequently the air is introduced as the liquid is drained and the volume thereof in the vessel is decreased.

11. Claim 15 and 19-20 are allowed.

12. Claims 2-4 and 8-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Applicant's comments have been given careful consideration, but have not been found persuasive. With respect to Hoie, the central drain 4,7 has been identified above, and thus the claim language is met in the reference. Regarding claim 6, the device of Hoie may be closed by a lid, as drain 7,4 would allow for any air to escape from the vessel if the latter were provided with a top lid. With respect to claims 16 and 18,

applicant has not pointed out any of the claimed steps which have not been identified in the reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vit W. Miska whose telephone number is 571-272-2108. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, K. Cuneo can be reached on 571-272-1957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VM
5/15/2006


Vit Miska
Primary Examiner